



State of Idaho

DEPARTMENT OF WATER RESOURCES

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July 26, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Bruce McFarland
Water District 75-D Watermaster
PO Box 124
Carmen, ID 83462

Re: Delivery of Exchange Water Rights from Carmen Creek to Burns and Fols Groups

Dear Mr. McFarland,

I have been asked to provide some guidance to you regarding interim delivery of the exchange water rights on Carmen Creek that are the subject of dispute between the Fols and Burns water user groups. On May 25, 2010, Snake River Basin Adjudication ("SRBA") District Court Judge Eric Wildman granted the State's request for interim administration of water rights in Administrative Basin 75, including rights on Carmen Creek and tributaries of Carmen Creek, except the exchange water rights that are disputed between the Burns and Fols groups. Judge Wildman specifically denied interim administration of the exchange rights as recommended either by the Idaho Department of Water Resources' (IDWR or Department) latest Supplemental Director's Report or its original Director's Report. Judge Wildman held "IDWR may defer to the historical administration of these [exchange] rights prior to the filing of the original *Director's Report*, whatever that may be, or the parties may opt to seek preliminary relief from the Court pending a determination of the merits in the underlying dispute."

As of the date of this letter, the parties have not yet opted to seek preliminary relief from the Court. In my phone call to you several weeks ago you specifically asked for some guidance regarding how and/or to whom these exchange rights should be delivered. I apologize for the delay in my response on this matter. I suspect that delivery of the rights in dispute may be more imminent as water supplies may soon begin to shrink.

Given that much of the historical delivery information for the exchange water is conflicting, confusing and/or incomplete and given that the District Court declined to grant interim administration based upon the latest recommendations, delivery of the water should be consistent with the original decree until the SRBA District Court rules on the validity of the claimed accomplished transfer or otherwise provides further direction. Until such further notice as may be provided by the District Court, the Department hereby instructs you to deliver the disputed exchange water rights to only those claimants whose lands or lots are located within the original place of use for water rights 75-69 and 75-70 decreed to Thomas Palmer (1902 Carmen Creek Decree) and who have claimed the right to use these exchange water rights in the SRBA. Specifically, the rights that should be delivered are shown in Tables 1 and 2 of Attachment A of this letter. The Department recognizes that the exchange rights involved in the Fols-Burns dispute are subject to further litigation in the District Court. The Department views the guidance provided herein as temporary, and likely limited to just the remaining 2010 irrigation season

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until the rights are determined by the District Court and/or the District Court provides further direction.

The following exchange rights recommended in the Supplemental Director's Report (706 Report) dated January 11, 2010 should not be delivered until further notice is provided by the District Court or IDWR: 75-10061N and 75-10062L (Pilkerton); 75-10061X and 75-10062V (Harling); 75-14025 and 75-14027 (Tutor); 75-14044 and 75-14046 (Dixon); 75-14055 and 75-14057 (Marcia); and 75-14056 and 75-14058 (Fols).

The rates of diversion for the individual rights in Tables 1 and 2 are a proportional distribution based upon the total number of acres where the water is used. The number of irrigated acres for the rights listed in Tables 1 and 2 are consistent with the acreage counts used in the other SRBA recommendations for these water users that have not been contested.

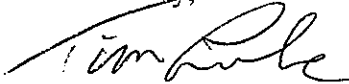
The rights listed in Tables 1 and 2 also do not include point of diversion descriptions but descriptions for each right are provided for the applicable rights that were attached to the Supplemental Director's Report or the original Director's Report. You and I previously discussed the location of the several ditches serving these exchange rights and you appeared to be familiar with the locations and which users are served by those ditches. In short, the rights for users on the north side of Carmen Creek are served primarily by the Parmenter Ditch. The 1875 priority Mattis right appears to be the only exchange right that has a separate diversion, which is the ditch located in the NWNW of Sec. 2, T22N, R22W (across the creek from one of the south side ditches serving Aldous and several of the Burns group users). The point of diversion descriptions for the south side lots seems a little more confusing. Our records list two separate diversions for the Burns' rights, two separate diversions for Matejko, Rice and Ernst (an upper and lower ditch shared with Aldous, and the upper ditch also shared with Quinn), and a separate diversion for Clementz. Given the number of potential diversions and limited amount of water under these exchange rights, the Department requests that you coordinate with the water users diverting from the south side of the creek regarding where and when the rights are to be delivered. Consolidating delivery of the rights to fewer ditches would appear to be more effective in terms of water use given the relatively small amounts of water per right.

The Department also understands that the Carmen Creek watermaster has traditionally combined the 5/1/1875 priority exchange rights with the 5/1/1882 priority exchange rights and collectively delivered the rights as if they had a 5/1/1882 priority date. The Department would normally agree with this novel approach if there were no other rights sharing the same priority dates and no other rights with priority dates between 5/1/1875 and 5/1/1882. With respect to Carmen Creek however, there are other non-exchange water rights that share the 5/1/1882 priority date. Therefore, the watermaster can not combine the different priority exchange rights with other 5/1/1882 priority rights on the creek unless there is a sufficient amount of water to fill all water rights with a priority of 5/1/1882 or senior. If the available water supply of the creek is not sufficient to fill all 5/1/1882 priority rights and senior, then the watermaster must deliver the 5/1/1875 rights in full and then proportion the remaining supply among all of the 5/1/1882 priority rights.

Please contact me directly at 208-287-4959 or Bob Foster at our Salmon Office at 208-756-6644 you have additional questions or need further assistance with respect to delivery of the exchange rights described in this letter.

IDWR will forward to you under separate cover letter an updated list of recommended water rights in Water District 75-D that are subject to the Interim Administration Order issued by the District Court on May 25, 2010 (excluding the rights listed in Tables 1 and 2, and on page 3 of this letter).

Sincerely,



Tim Luke

Water Distribution Section

Cc: Attached Service List
Garrick Baxter, IDWR Deputy Attorney General
Bob Foster, IDWR Salmon Office
IDWR Eastern Region
Rob Harris
David Negri

ATTACHMENT A

Table 1. Splits of the 1875 priority exchange water for 30 inches (0.6 cfs)

<u>Water Right No.</u>	<u>Acres</u>	<u>CFS</u>	<u>Inches</u>	<u>Owner(s)</u>
75-10061A	10.9	0.080	4.02	BURNS, JOHN E ; BURNS, RUTH C
75-10061AC	1.4	0.010	0.52	CABIGAS, JOHNNY J; GREENWAY, LANA J
75-10061AE	2.1	0.015	0.77	CLEMENTZ, WILLIAM W
75-10061AM	5	0.037	1.85	YOWELL, STEVEN K
75-10061B	11.2	0.083	4.13	HUDSON, JAMES PAUL
75-10061Q	3.2	0.024	1.18	QUINN, JAMES R ; QUINN, ROWENA D
75-10061R	9.4	0.069	3.47	MATEJKO, GEORGE
75-10061T	6	0.044	2.21	MOSHER, FRANSICKA ; MOSHER, ROBERT D
75-10061Y	1.7	0.013	0.63	ERNEST, JACQUELINE D ; ERNEST, ROBERT M
75-10061Z	6.7	0.049	2.47	MATTIS, SHIRLEY J
75-10061J	2.6	0.019	0.96	TIPPETT, CATHLEEN ; TIPPETT, JAMES R
75-10061AA	3.1	0.023	1.14	EDMISTON, RODNEY H
75-10137A	4.4	0.032	1.62	EISENHAUER, PHILLIP G ; ERWIN, SHELLEY L
75-10137B	4.5	0.033	1.66	HERSHEY, TERRY J; HERSHEY, VERALYN E
75-14443	8	0.059	2.95	RICE, LINDA; RICE, RICK
75-10061C	1.1	0.008	0.41	FADNESS, DANNY E ; FADNESS, ROBERTA V
Totals	81.3	0.6	30	

Table 2. Splits of the 1882 priority exchange water for 15 inches (0.3 cfs)

<u>Water Right No.</u>	<u>Acres</u>	<u>CFS</u>	<u>Inches</u>	<u>Owner(s)</u>
75-10062A	10.9	0.038	1.89	BURNS, JOHN E ; BURNS, RUTH C
75-10062AA	1.4	0.005	0.24	CABIGAS, JOHNNY J; GREENWAY, LANA J
75-10062AB	8.4	0.029	1.46	JACKSON, DONNA K ; JACKSON, THOMAS M
75-10062AC	2.1	0.007	0.36	CLEMENTZ, WILLIAM W
75-10062AL	5	0.017	0.87	YOWELL, STEVEN K
75-10062C	11.2	0.039	1.94	HUDSON, JAMES PAUL
75-10062H	2.6	0.009	0.45	TIPPETT, CATHLEEN; TIPPETT, JAMES R
75-10062P	9.4	0.033	1.63	MATEJKO, GEORGE
75-10062R	6	0.021	1.04	MOSHER, FRANSICKA; MOSHER, ROBERT D
75-10062W	1.7	0.006	0.29	ERNEST, JACQUELINE D; ERNEST, ROBERT M
75-10062X	6.7	0.023	1.16	MATTIS, SHIRLEY J
75-10062Y	3.1	0.011	0.54	EDMISTON, RODNEY HUGH
75-10136A	4.4	0.015	0.76	EISENHAUER, PHILLIP G; ERWIN, SHELLEY L
75-10136B	4.5	0.016	0.78	HERSHEY, TERRY J; HERSHEY, VERALYN E
75-14441	8	0.028	1.39	RICE, LINDA; RICE, RICK
75-14388	1.1	0.004	0.19	FADNESS, DANNY E ; FADNESS, ROBERTA V
Totals	86.5	0.3	15	

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